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Office-Supreme Court, U.S.
FILED
JAN 26 1960
JAMES R. BROWNING, Clerk

No. 45

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

GEORGE B. PETITE, *Petitioner*

v.

UNITED STATES OF AMERICA

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF IN RESPONSE TO MOTION TO VACATE THE JUDGMENT AND DISMISS THE INDICTMENT

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On December 1, 1959, the Solicitor General filed a motion to vacate the judgment and dismiss the indictment herein. Petitioner advised the Court that he did not oppose this motion and specifically waived his right to file a reply. His position was set forth in a letter from his counsel to the Clerk of this Court under date of December 2, 1959. Subsequently, however, the Clerk advised counsel that the Court desired a printed response to the Solicitor General's motion.

Petitioner agrees with the government that the institution of the present prosecution was contrary to

sound policy and that this Court has power, upon motion by the government, to vacate the judgment of conviction and direct dismissal of the indictment. Repetition of the arguments and authorities relied upon by the government in support of these conclusions would seem superfluous. It hence becomes unnecessary to determine the serious constitutional question presented in the petition for certiorari, namely, whether the present prosecution was barred by the double jeopardy clause of the Fifth Amendment.

The Solicitor General has raised some question as to whether dismissal of the indictment at this time would constitute a dismissal with prejudice. Since any new proceedings against petitioner would be barred by the statute of limitations, however, this question is of no practical consequence.

For the foregoing reasons, petitioner joins in and consents to the Solicitor General's motion.

Respectfully submitted,

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January, 1960